

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-62

March 7, 2000

Log On America, Inc.  
Petition for Finding of Public  
Convenience and Necessity to Operate  
as a Reseller and Facilities Based Provider  
of Local Exchange and Interexchange  
Telephone Services

ORDER GRANTING AUTHORITY  
TO PROVIDE FACILITIES-BASED AND  
RESOLD LOCAL EXCHANGE AND  
INTEREXCHANGE SERVICE AND  
APPROVING SCHEDULE OF RATES  
AND TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Log On America, Inc. (Log On America or Company) the authority to provide facilities-based and resold competitive local exchange and interexchange service. Log On America is authorized by this Order to provide local exchange service as a reseller, and both facilities-based and resold interexchange service throughout the State of Maine; and facilities-based local exchange service in the service area of various exchanges of New England Telephone and Telegraph Company d/b/a Bell Atlantic - Maine listed below. This Order also approves the Company's initial Terms and Conditions and Rate Schedules. We also exempt Log On America from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On January 24, 2000, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Log On America filed a petition with the Commission requesting authority to provide facilities-based and resold local exchange and interexchange telephone service in Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where a utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Log On America the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Log On America's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

## **II. SERVICE TERRITORY**

### **A. Interexchange Service Authority**

Log On America has requested authority to provide facilities-based and resold interexchange service throughout the state. We grant that authority.

### **B. Local Service Authority**

Log On America initially requested authority to provide facilities-based and resold local exchange service throughout the state. It later amended its request to limit its facilities-based local exchange service to the areas served by the Kennebunk, Sanford, Biddeford, Portland, Brunswick, Lewiston, Augusta and Bangor exchanges of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine. Facilities-based service includes service provided through the use of unbundled network elements obtained from incumbent local exchange carriers. At this time, Log On America is only willing and able to provide facilities-based local exchange service to areas within the exchanges named above, and we limit Log On America's authority to provide facilities-based local exchange service to areas within those exchanges.

If Log On America wishes to expand its facilities-based local exchange service area in the future, it must seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Log On America's proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within six months. It is not necessary for a CLEC with existing authority to present a full application in order to

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request additional service territory authority. The Commission will act expeditiously on any such application. With any such application, Log On America shall include information establishing a readiness to provide facilities-based local service within six months in the specifically identified additional areas.

Log On America has also requested authority to provide local exchange service as a reseller throughout the state. It states that it will resell local exchange service provided by other local exchange carriers (LECs). We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1), or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale.

### **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by Log On America to go into effect. Log On America has used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's, terms, conditions and rate schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Log On America's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions are pages stating that in the event of such a conflict, the statute or the Commission's rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Log On America's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Log On America to go into effect.

### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Log On America's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local

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exchange carriers are “rural telephone companies.” A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement “is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . .” Although the service territory we grant today for resold local exchange service is statewide, as a practical matter Log On America cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC’s rural exemption is terminated.

On February 8, 2000, in Docket No. 2000-16, the Commission approved an agreement between Log On America and New England Telephone and Telegraph Co. d/b/a Bell Atlantic pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, Log On America must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

## **V. PAYMENT OF ACCESS CHARGES**

Our approval of Log On America’s application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) that have approved access charge rate schedules on file with the Commission. Because Log On America is a facilities-based interexchange carrier, it must pay access charges directly to those local exchange carriers.

The Commission has granted authority to Log On America to provide interexchange service both as a facilities-based carrier and as a switchless reseller.<sup>1</sup> To the extent that Log On America provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers. Switchless resellers do not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, the reseller’s underlying facilities-based carrier must also have authority to provide intrastate service in Maine. Log On America has stated that MCI Worldcom will be the underlying carrier from which it purchases interexchange services that it resells. MCI Worldcom is authorized by the Commission to provide intrastate interexchange service and does pay access charges for the intrastate interexchange services it sells to switchless resellers providing interexchange service in

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<sup>1</sup>We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

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Maine. If Log On America begins to use another underlying carrier, it shall notify the Commission as required by the ordering paragraphs. When Log On America begins to provide facilities-based interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

## **VI. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, Log On America must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Log On America shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, Log On America is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Although Log On America has not requested waivers from the requirements of Chapter 210, and from 35-A M.R.S.A. §§ 707 and 708 for its local exchange service, the Commission has the authority to grant such waivers on its own motion, and we do so. Because Log On America's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

The Company must, however, report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.<sup>2</sup> If Log On America sells access service, or interexchange service to other telephone service providers that resell that interexchange service, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), Log On America shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below

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<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

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In addition, Log On America shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VII. OTHER REQUIREMENTS**

Log On America shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

## **VIII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Log On America, Inc. to provide facilities-based competitive local exchange telephone service as a reseller in the areas served by the Kennebunk, Sanford, Biddeford, Portland, Brunswick, Lewiston, Augusta and Bangor exchanges of New England Telephone and Telegraph Company d/b/a Bell Atlantic - Maine within the State of Maine; competitive local exchange service as reseller in all areas of the State of Maine; and facilities-based and resold interexchange service in all areas of the State of Maine;

2. Exempt Log On America, Inc. from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt Log On America, Inc. from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, but Log On America shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of Log On America or of any entity that owns more than 50% of Log On America. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), Log On America, Inc. shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. Log On America, Inc. shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Log On America shall amend its rate schedules and terms and conditions to reflect any change in identity; and

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4. Order that Log On America, Inc.'s proposed terms and conditions and rate schedules (pages 1-15), attached to this Order, shall be effective on the date of this Order;

5. Order that Log On America, Inc., or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange access charges as required by approved access rate schedules filed by local exchange carriers.

Log On America, Inc. shall notify the Commission of any change in the underlying carrier it uses for resale of interexchange service within 30 days following the change. Log On America, Inc. shall immediately inform the Commission and all local exchange carriers in the State of Maine from which Log On America will be purchasing access services if it begins to provide facilities-based interexchange service, i.e., if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic. At that time Log On America, Inc. shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

6. Order that Log On America, Inc. shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine, this 7<sup>th</sup> day of March, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent  
Diamond

#### NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

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1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

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